

IT 95-48

Tax Type: INCOME TAX

Issue: Income Earned In Illinois/Individual Residency

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE      )  
STATE OF ILLINOIS          )  
                             ) SS#  
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                             ) v.  
                             ) Mimi Brin  
XXXXXX                     ) Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as a result of a timely protest by XXXXX (hereinafter referred to as the "Taxpayers") to Notices of Deficiency (hereinafter referred to as the "Notices") issued by the Illinois Department of Revenue (hereinafter referred to as the "Department") on January 19, 1995. The bases of the Notices are the Department's determination that taxpayers failed to file Illinois income tax returns for the years ending December 31, 1991 and December 31, 1992 (hereinafter referred to as the "Tax Years"). The notices proposed assessments of taxes, as well as various statutory penalties and interest.

Taxpayers responded to the Department asserting that taxes were paid to the State of Missouri for those tax years, and forwarded to the Department copies of their Missouri income tax returns for those periods. They also stated that they did not wish a formal hearing in this matter. Therefore, the following issue is being heard on the information provided by the taxpayer in their protest, documents filed and on the Notices.: 1) whether the taxpayers have overcome the prima facie correctness of the Notices of Deficiency with sufficient evidence to show that they are not required to file and/or pay Illinois income tax.

Following a review of the documentation, it is recommended that this matter be resolved in favor of the Department of Revenue, in part, with the taxpayers being given a credit for income taxes paid to the state of Missouri for the tax years.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the Notices of Deficiency which indicate that for the tax year ending December 31, 1991, taxpayers failed to pay or file an Illinois income tax return for tax, penalty and interest totaling \$2,343.00 calculated to January 19, 1995 (Dept. Ex. No. 1) and for the tax year ending December 31, 1992, taxpayers failed to pay or file an Illinois income tax return for tax, penalty and interest totaling \$2,589.00 calculated to January 19, 1995. Dept. Ex. No. 1

2. Taxpayers failed to pay or file Illinois income tax returns for the tax years. Dept. Ex. No. 1; Taxpayers' Protest

3. Taxpayers lived in Illinois during the tax years. Dept. Ex. No. 1; Taxpayers' Missouri Income tax returns for tax years.

4. Taxpayers filed and paid income taxes to the state of Missouri for each of the tax years. Taxpayers' State of Missouri Income Tax returns

5. Taxpayers filed timely protests to the Notices and asked that the matters not be heard at formal hearing. 35 ILCS 908(a); Taxpayers' Protest

CONCLUSIONS OF LAW: The Illinois Income Tax Act, 35 ILCS 5/101 et seq., provides, inter alia, that Illinois residents shall file pertinent returns with the State showing all items of income allocated for the period of residency. 35 ILCS 5/201; 35 ILCS 3/301 The Department claims, and taxpayers' tax returns filed with the state of Missouri show that during the tax years, taxpayers resided in O'Fallon, Illinois, although their income was largely derived from employment in Missouri. Taxpayers'

Missouri Income tax returns with W-2 attachments

I am unaware of any provision which exempts these taxpayers from filing Illinois income tax returns while residents here, or from the payment of Illinois income tax under these circumstances. However, Illinois' Income Tax Act does provide for a foreign tax credit, which reads, in pertinent part:

The aggregate amount of tax which is imposed upon or measured by income and which is paid by a resident for a taxable year to another state or states on income which is also subject to the tax imposed by subsections 201(a) and (b) of this Act shall be credited against the tax imposed by subsections 201(a) and (b) otherwise due under this Act for such taxable year. The aggregate credit provided under this paragraph shall not exceed that amount which bears the same ratio to the tax imposed by subsections 201(a) and (b) otherwise due under this Act as the amount of the taxpayer's base income subject to tax both by such other state or states and by this State bears to his total base income subject to tax by this State for the taxable year.

35 ILCS 5/601(b)(3) The purpose of the provision for a foreign tax credit is to avoid double taxation by crediting a resident taxpayer with the amounts of tax actually imposed by a foreign state and actually paid to such foreign state on identical income which was also subject to tax in Illinois Hutchins v. Illinois Department of Revenue, No. 79-MI-130115 (Circuit Court, Cook County, 1979)

Taxpayers provided the Department copies of the tax returns they filed in the state of Missouri for the tax years. Therefore, it is my recommendation that the Notices of Deficiency be finalized to the extent that taxpayers are given credit for income tax paid to the state of Missouri for the tax years, and finalized for penalties for failure to file and/or pay Illinois income tax returns for those years, as well as for any interest accruing thereon.

Mimi Brin
Administrative Law Judge